Legal Assistance Resource Center
❖ of Connecticut, Inc. ❖

44 Capitol Avenue, Suite 301 ❖ Hartford, Connecticut 06106
(860) 278-5688 x203 ❖ FAX (860) 278-2957 ❖ Rpodolsky@LARCC.org

S.B. 367 -- Intervention in CHRO cases

Judiciary Committee public hearing -- March 26, 2010
Testimony of Raphael L. Podolsky

Recommended Committee action: **APPROVAL OF THE BILL**

This bill explicitly adopts the decision of the Appellate Court in CHRO ex rel. Kilby v. Litchfield Housing Authority, 117 Conn. App. 30 (2009), as the correct interpretation of the rights of a victim of housing discrimination when the trial of the complaint is held in Superior Court rather than in a CHRO administrative hearing. The status of the Appellate Court's decision is in doubt because the Supreme Court has accepted an appeal. This bill would amend C.G.S. 46a-83(d)(2), which is part of the state Fair Housing Act, to make clear that a tenant who files a fair housing complaint with CHRO has the right to participate in his or her own case (i.e., the right to intervene), if that case is transferred from CHRO to the Superior Court. The bill will thereby put an end to any possible misinterpretation of the statute.

The state Fair Housing Act provides that, if conciliation fails and a CHRO investigator finds "reasonable cause to believe" that discrimination has occurred, the case will be tried on the merits in a CHRO administrative hearing, unless either party requests that it be tried in Superior Court. If such a request is made, then CHRO brings a civil action as plaintiff in Superior Court. The landlord, as defendant, is a party in the case. In the past, a complainant who had his or her own lawyer would routinely intervene as a party to protect his or her own interests. Indeed, the statute allows CHRO to have the complainant's attorney, rather than the CHRO attorney, primarily handle the trial. Under C.G.S. 46a-83(d), the complainant has an explicit statutory right to be represented by his or her own attorney in an administrative hearing, but the statute is silent on such involvement in a complaint transferred to court. In 2008, two trial judges refused to allow complainants to intervene in their own cases on the ground that CHRO would adequately protect their interests. In 2009, however, the Appellate Court reversed. That court recognized correctly that the interest of complainants in seeking relief for themselves is not the same as CHRO's interest in preventing housing discrimination as a matter of public policy and also that a contrary interpretation ignored the explicit legislative purpose behind this procedure, which was to make the Connecticut statute "substantially equivalent" to the Fair Housing Act. In addition, the Appellate Court decision prevents the respondents in discrimination cases from blocking complainants from having their own lawyers by moving the trial from CHRO to the Superior Court. The Supreme Court's grant of certification, unfortunately, puts the Appellate Court's decision in doubt.

S.B. 367 makes clear that the tenant in a housing discrimination case has the same right to participate in the trial of the case as does the landlord and that the Appellate Court's interpretation of the statute is correct.